
(2003) 05 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7821 of 1996

Mukko	Vs	APPELLANT
The Union of India (UOI) and Others		RESPONDENT

Date of Decision : 03-05-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 28A

Citation : (2003) 134 PLR 812 : (2003) 3 RCR(Civil) 499

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Vinod K. Kataria, for the Appellant; Anil Kumar Sharma, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—This order of mine shall dispose of Civil Writ Petitions No. 7821, 7823, 7826, 7828, 7829, 7830, 7832, 7840 and 7824-A of 1996, in which the common questions of fact and law are involved. In these petitions, the petitioners, who are the landowners, are seeking issuance of a writ in the nature of mandamus directing the respondents to make payment of enhanced compensation of the land in question in view of the award dated 30.3.1993, passed by the Special Land Acquisition Collector, Jalandhar (respondent No. 2 herein) u/s 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) within a specified time.

2. The brief facts of the case are that the Union of India acquired a huge piece of land in different villages, including villages Bhucho Khurd and Bhucho-Kalan vide Notification dated 29.10.1976 issued u/s 4 of the Act for a public purpose. For that acquisition, respondent No. 2 made the award u/s 11 of the Act on 21.3.1979. Feeling aggrieved against the said award, some of the aggrieved claimants/landlords sought reference u/s 18 of the Act for enhancement of the compensation. However, the petitioners did not seek any reference u/s 18 of the Act. The reference sought by some of the landowners was decided by the

Additional District Judge, Bathinda in Mukhtiar Singh and Anr. v. Union of India, vide his award dated 7.6.1991 and the compensation payable to the landowners was enhanced.

3. The petitioners, who admittedly did not seek any reference u/s 18 of the Act, made, application u/s 28-A of the Act which was inserted in the Act by the Land Acquisition (Amendment) Act, 1984 (68 of 1984) for re-determination of the compensation payable to them on the basis of the award dated 7.6.1991 passed by the Additional District Judge, Bathinda u/s 26 of the Act being the Reference Court. The said application as allowed by the Special Land Acquisition Collector vide his award dated 30.3.1993 and the amount of compensation payable to the petitioners was re-determined according to the aforesaid award dated 7.6.1991 passed by the Additional District Judge, Bathinda.

4. The Union of India (respondent-herein) challenged the aforesaid award dated 30.3.1993 passed by the Special Land Acquisition Collector by filing C.W.P. No. 16199 of 1993 before this Court. One of the ground in the aforesaid writ petition was that an appeal against the award dated 7.6.1991 passed by the Additional District Judge, Bathinda, filed by the Union of India for reduction of the amount of compensation was pending. After hearing the learned counsel for the parties, the said writ petition was dismissed by a Division Bench of this Court on 24.5.1994. However, the respondent-Union of India was granted a liberty to file another writ petition on the same cause of action in case the amount of compensation payable to the landowners is reduced in the aforesaid appeal. The operative part of the order dated 24.5.1994 passed in the aforesaid writ petition is reproduced as under:-

"It has remained undisputed before us that the Land Acquisition Court in Mukhtiar Singh's case (supra) was dealing with the same acquired land which has been acquired in the present case and the notification is also similar. Statutory benefits have also been granted. Section 28-A of the Act has been enacted for the purpose of giving same amount of compensation to such land owners who did not seek reference u/s 18 of the Act. In view thereof, no fault can be found with the impugned award.

The counsel for the petitioners has drawn the pointed attention of this Court to the pendency of the appeal against the impugned award in Mukhtiar Singh's case (supra). The counsel for the land owners, at this stage, submitted that in case the appeal of the Union of India against the original award is allowed and the compensation amount is reduced, the petitioners would be at liberty to file another writ petition on the same cause of action."

5. Against the aforesaid order passed by this Court, no SLP was filed by the Union of India, Thereafter, the petitioners represented to the Special Land Acquisition Collector for payment of compensation as determined vide award dated 30.3.1993. Respondent No. 2 instead of making compensation to the petitioners prepared the statement of enhanced compensation on 30.5.1994 and

sent the same to the Defence Estate Officer (respondent No. 3 herein) vide his letter dated 8.11.1995 in which a request was made for payment of compensation to the landowners. In spite of that, no enhanced compensation was paid to the petitioners. Thereupon, the petitioners served a legal notice dated 11.12.1995 (Annexure P-2) to respondents No. 2 and 3 for payment of the enhanced compensation as per the award dated 30.3.1993. When the respondents did not release the enhanced compensation as per the aforesaid award, the petitioners filed the instant writ petition for issuance of a direction to the respondents for release of the enhanced compensation to them according to the award dated 30.3.1993 passed by respondent No. 2.

6. Pursuant to the notice issued to the respondents, written statement was filed on behalf of respondents No. 1 and 3. In the written statement, though the respondents have not disputed the material averments made in the writ petition, however, it has been pleaded that the award dated 30.3.1993 made by the Special Land Acquisition Collector u/s 28-A of the Act is without jurisdiction and a nullity. In the written statement, it has not been disclosed how the aforesaid award dated 30.3.1993 is without jurisdiction and a nullity.

7. The learned counsel for the respondents submitted that the provisions of Section 28-A of the Act were not available to the petitioners for seeking enhancement of the compensation on the basis of the award dated 7.6.1991 passed by the Additional District Judge, Bathinda, as in the instant case, the Land Acquisition Collector passed the award on 21.3.1979, i.e., much prior to the introduction of Section 28-A of the Act by the Land Acquisition (Amendment) Act, 1984 (68 of 1984). Therefore the application filed by the petitioners u/s 28-A of the Act, which was allowed by the Special Land Acquisition Collector on 30.3.1993 was not maintainable at all and the award passed by the Special Land Acquisition Collector on that application is wholly without jurisdiction and a nullity; and thus the respondents are not duty bound to implement the award dated 30.3.1993 passed by the Special Land Acquisition Collector.

8. I have heard the arguments of the learned counsel for both the parties and have perused the record of the case. In my opinion, the aforesaid contention raised by the learned counsel for the respondents is wholly devoid of merit. The award made by the Land Acquisition Collector u/s 11 of the Act does not confer any cause of action to the claimants/landowners for making an application u/s 28-A of the Act. That award only gave a cause of action to the claimants and landowners to seek reference u/s 18 of the Act for enhancement of the compensation, if they are not satisfied with the amount of compensation. The cause of action for making of application u/s 28-A of the Act would only arise when an award has been made by the civil Court on a reference u/s 18 of the Act enhancing the compensation over and above the amount awarded by the Land Acquisition Collector in his award u/s 11 of the Act. In the instant case, the award u/s 26 of the Act was made on 7.6.1991. It is now well settled that the Land Acquisition (Amendment) Act, 1984 (68 of 1984) has given prospective

operation to Section 28-A of the Act from 24.9.1984, the date on which the aforesaid amendment was enforced. In this regard, reference can be made to the decisions of the Supreme Court in *Union of India (UOI) and Others Vs. Karnail Singh and Others*, and *Babua Ram and Others Vs. State of U.P. and Another*, .

9. Now the question for determination is when a cause of action arises to a claimant/landowner for making application u/s 28-A of the Act. Whether such cause of action arises to the claimants/landowners when an award was made by the Land Acquisition Collector u/s 11 of the Act or when such cause of action arises to landowner when an award was made by the civil Court/Reference Court u/s 26 of the Act. It is well settled that a cause of action for making an application u/s 28-A of the Act would only arise when an award has been made by the civil Court/Reference Court u/s 28-A of the Act and that too only when the amount of compensation has been enhanced over and above the amount awarded by the Land Acquisition Collector in his award u/s 11 of the Act. In this regard, reference can again be made to the cases of *Karnail Singh and Babua Ram (supra)*. The condition for making an application u/s 28-A of the Act is that such application can only be made by a claimant/landowner, if he has not filed any application u/s 18 of the Act for enhancement of compensation and secondly that such application should be filed within a period of three months from the date the award made by the Reference Court u/s 26 of the Act. Undisputedly, in the instant case, none of the petitioners filed any application u/s 18 of the Act for enhancement of compensation and they also filed the application u/s 28-A of the Act within the prescribed period of three months. Since Section 28-A of the Act has been given prospective operation under the Land Acquisition (Amendment) Act, 1984, therefore, it does not furnish any right to a claimant/landowner to make an application u/s 28-A of the Act, on the basis of an award made by the Reference Court u/s 26 of the Act which was made prior to 24.9.1984. Thus, the cut-off date for arising of cause of action is 24.9.1984. That means that the award made by the Reference Court must have been made on or after 24.9.1984. If an award by Reference Court is made even a date prior to 24.9.1984, no application would be made by the claimant/landowner even though the period of three months limitation for filing such application has still not expired. Therefore, the date of the award u/s 11 of the Act has no relevance or connection for filing of an application u/s 28-A of the Act, as the said award does not furnish any cause of action to the landowners for making an application u/s 28-A of the Act for re-determination of the compensation on the basis of the award made by the Reference Court.

10. In view of the aforesaid legal position, there is no force in the contention of the respondents. In the instant case, the award made by the Reference Court u/s 26 of the Act was passed by the Additional District Judge on 7.6.1991, i.e. much after 24.9.1984. Therefore, it cannot be said at all that the application filed by the petitioners u/s 28-A of the Act was not maintainable, merely because the Land Acquisition Collector passed the award in the instant case u/s 11 of the Act on 21.3.1979. I also do not find any force in the contention of the learned

counsel for the respondents if the case is examined from another angle. In the instant case, against the award dated 30.3.1993 vide which the application of the petitioners u/s 28-A of the Act was allowed by the Land Acquisition Collector, the respondent-Union of India filed C.W.P. No. 16197 of 1993 challenging the validity of the said order. The said writ petition was dismissed by a Division Bench of this Court on 24.5.1994. No SLP was filed against the aforesaid decision by the respondent-Union of India. Though in the written statement, an averment has been made that SLP was filed but the counsel for the respondents has stated at the bar that no SLP against the aforesaid order was filed or is pending. In view of these facts, once the award dated 30.3.1993 was upheld by this Court, then the respondents cannot be permitted to question the validity of the said award in the instant writ petition, as the decision in the aforesaid writ petition will operate as *res judicata* between the parties. In the aforesaid writ petition, only liberty was granted to the respondents that in case the amount of compensation is reduced on the appeal filed against the award dated 7.6.1991, the respondent-Union of India would be at liberty to file a fresh petition, admittedly, no amount of compensation, as awarded by the Additional District Judge vide his award dated 7.6.1991, has been reduced. Therefore, the respondents cannot be permitted in the instant petition to question the validity of the award dated 30.3.1993. In a similar situation, I have already taken the view in *Union of India v. Jasmel Kaur*, (2003-1)133 PLR 259 to the effect that once a judgment became final between the parties, the same cannot be set aside or its effect cannot be taken away on the ground that an erroneous view was taken by the said judgment, in view of the subsequent judgment of the Apex Court. A decision may be incorrect, but such a decision cannot be equated with a decision rendered without jurisdiction. A wrong decision by a Court having jurisdiction as much binding between the parties as a right one and may be superseded only by appeals to higher Courts or other proceedings like review which the law permits. Thus, from this angle also, there is no force in the contention of the learned counsel for the respondents.

11. In view of the aforesaid legal position, it is the duty of the respondents to make the payment of compensation to the claimants as per the award dated 30.3.1993 passed by the Special Land Acquisition Collector u/s 28-A of the Act vide which the compensation was re-determined according to the award dated 7.6.1991 passed by the Reference Court u/s 26 of the Act. The respondents have failed in their duty while not making payment of the amount of enhanced compensation to the landowners/claimants which they are statutorily duty bound to pay to the landowners/claimants according to the award passed u/s 28-A of the Act.

12. In view of the aforesaid discussion, these writ petitions are allowed. The respondents are hereby directed to make the payment of compensation to the petitioners in terms of the award dated 30.3.1993 passed by respondent No. 2 u/s 28-A of the Act within a period of three months from the receipt of a copy of this order.

13. No order as to costs.